

# Adjudication and the Kootenai River Basin

*"Adjudication serves a noble purpose. It lets people of Idaho know just what they own. Everything from farming to fishing to mining and manufacturing requires water. Each of these will go smoothly now that they know what they own."*

U.S. Supreme Court Justice Anthony Scalia, 2014.

**IDAHO** Department of  
**Water Resources**

# What is an Adjudication

- Idaho Code § 42-1406B:

“Effective management of the waters of northern Idaho requires that a comprehensive determination of the nature, extent and priority of the rights of users of surface and ground water be determined.”

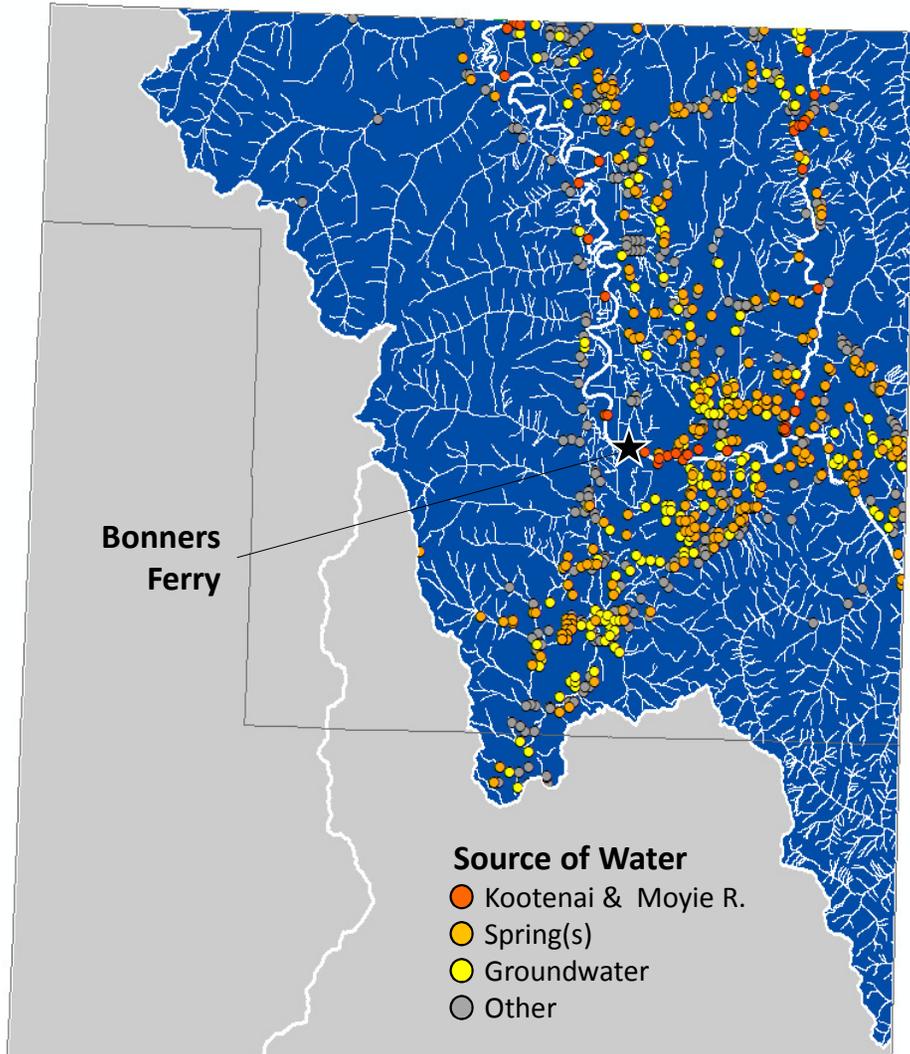
- Purpose: Catalog and confirm through District Court all water rights in a particular river basin (i.e., Kootenai River Basin), including surface and ground water.

- Analogies:

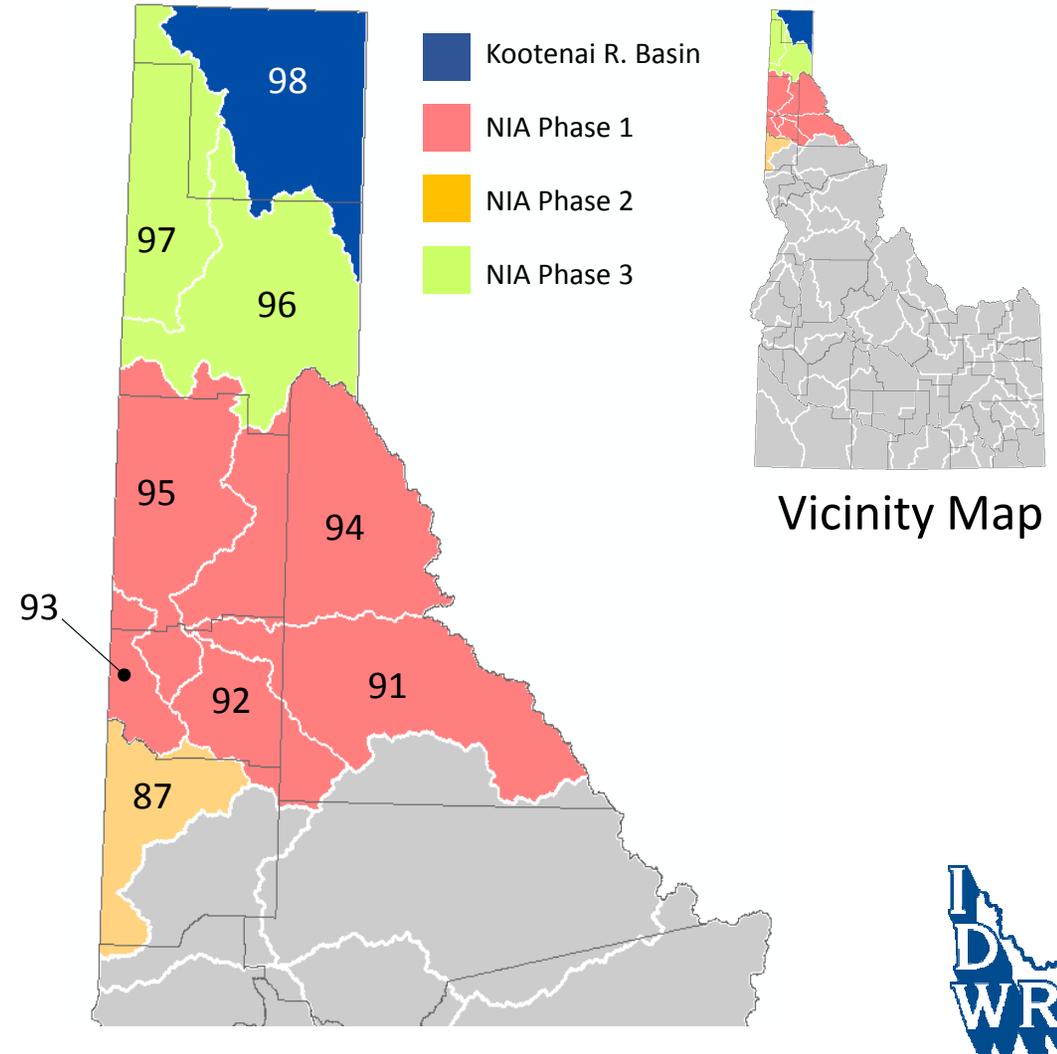
- Car Title
- Property Deed



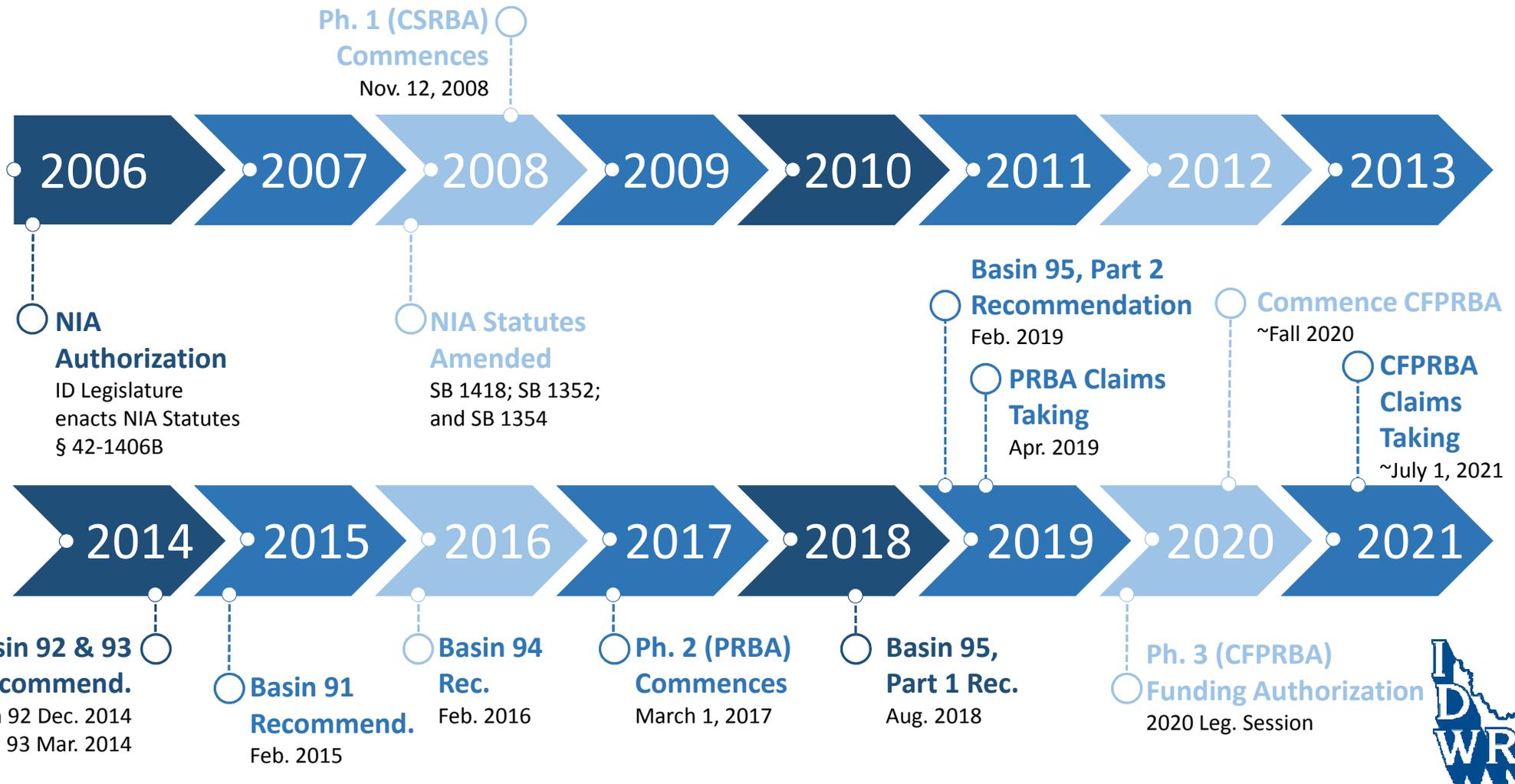
## Basin 98



## Northern Idaho Adjudication



# Northern Idaho Adjudication (NIA) - Timeline



# 2008 Leg. Session, SB #1418

## Why was the Kootenai Removed from the NIA?

- ◆ Fairness
- ◆ Domestic Meters and Fees
- ◆ Constitution
- ◆ Abundancy of Water
- ◆ Trust
- ◆ Canada
- ◆ Science



# Fairness: Snake R. Basin vs. Northern Idaho

## 💧 Claim Filing Fees – SB No. 1352

- Amended fees to match SRBA domestic filing fees and cap hydro-power claim filing fees at \$250K

## 💧 Domestic Defferals – SB No. 1354

- Allowed “deferral” of domestic and stockwater uses similar to the SRBA
- Water users can choose to defer (postpone) filing for small surface water and ground water domestic and uses.
  - ≤13,000 gallons/day
  - Dfn: Idaho Code, 42-111



# Domestic Use: Meters and User Fees



## 💧 Water Districts – Who Participates?

- Participation is decided by the district Advisory Committee.
- Assessments are set by the district Advisory Committee.
- Domestic Ground Water Uses are Excluded.

## 💧 Measurement Orders – Who Measures?

- Domestic Ground Water and Surface Water are excluded.
- All uses  $\leq 5$  acres or  $\leq 0.24$  cfs (108 gpm) are excluded.

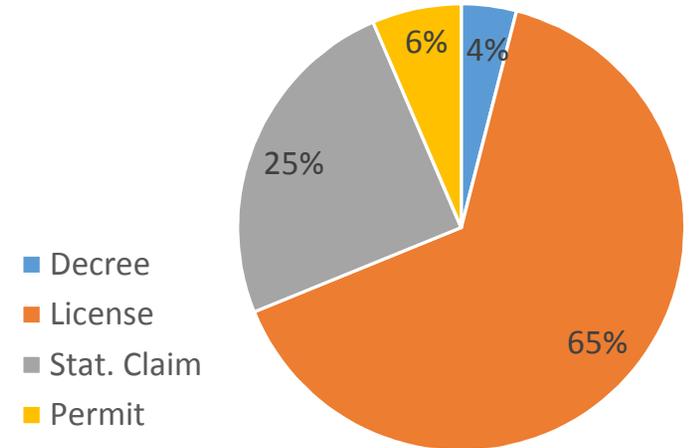
## 💧 Meters on Domestic Well?

- Administration of domestic ground water uses in the Kootenai Basin would be without precedent.
- Unfair to regulate domestic ground water right holders.
- The metering of domestic wells is not on the horizon!

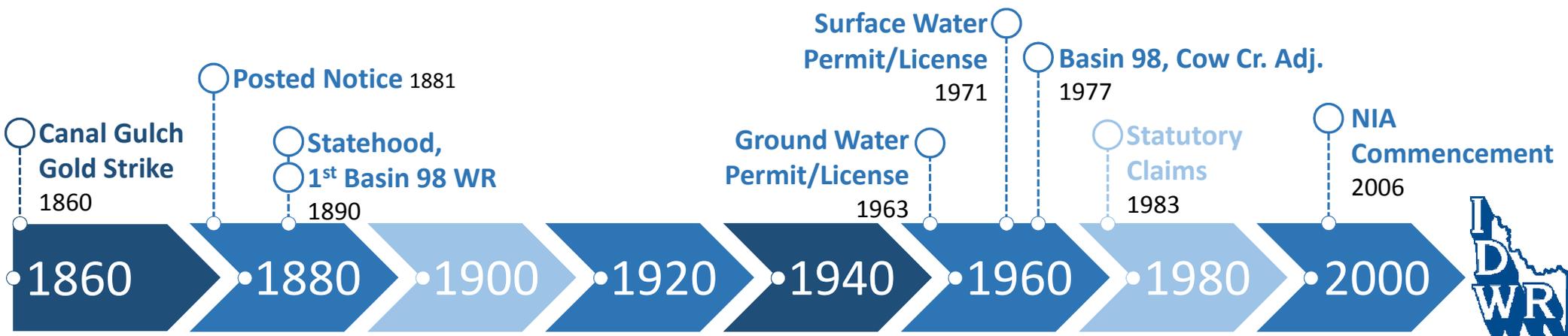


# How to Legally Divert and Use Water

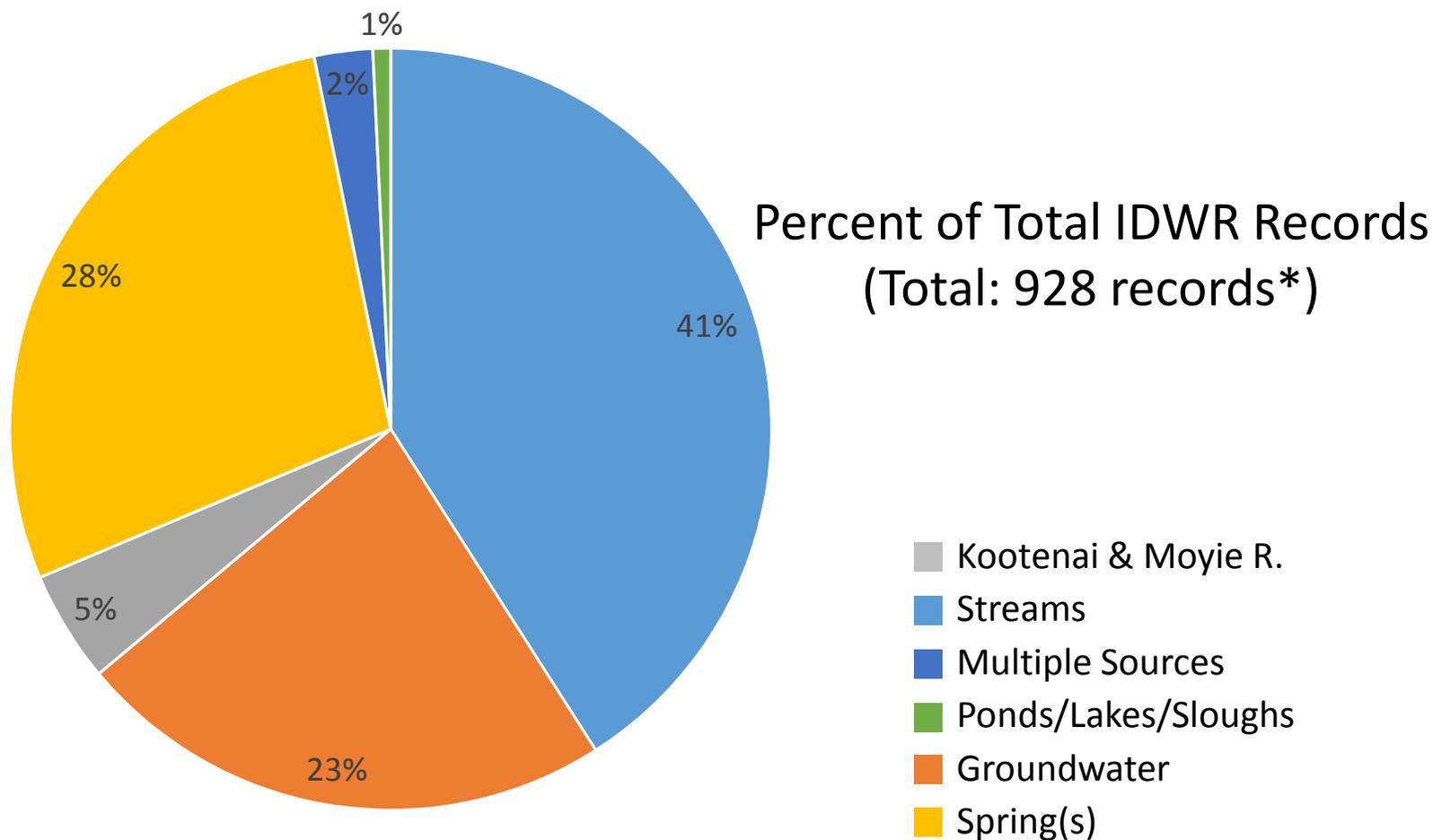
- 🔥 Constitution (Article XV – Water Rights)
- 🔥 Beneficial Use Water Right (AKA Constitutional WR)
- 🔥 Mandatory Permit/License (§ 42-229; §§ 42-103, 201)
- 🔥 Mandatory Statutory Claims (§§ 42-243, 244)
- 🔥 Administering a Claim vs. Permit/License vs. Decree (§ 42-607)



Basin 98 - Basis of WR Record



# Abundancy or Sufficiency of Water Supply



\*Records include decrees, licenses, statutory claims, and permits.

# Other Concerns from 2008

## 💧 Trust in the Department and the process

- Is there still a lack of trust today?

## 💧 Concerns over Canada

- Water Right Adjudication
- Columbia River Treaty Negotiations

## 💧 The state of the science

- Stable Admin. Basins
- Rathdrum Prairie Aquifer



# The Benefits of an Adjudication



- ◆ Protection against competition for finite resources
  - Supplies are not always sufficient to meet demands
  - During times of scarcity Idaho relies on priority administration
- ◆ North Idaho population projected to grow 19.5% by 2026\*
  - Increasing population represents increasing competition for finite resources
- ◆ Confirm Private Property Rights
- ◆ Only way to confirm Statutory Claims
- ◆ Record and confirm beneficial use rights
- ◆ Record changes to water rights
- ◆ Practical Considerations

\*Population growth forecast obtained from the Idaho Department of Labor.



# Questions and Comments.

([www.idwr.idaho.gov](http://www.idwr.idaho.gov))

